

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Petitions of the Verizon Telephone Companies for)
Forbearance Pursuant to 47 U.S.C. § 160(c) in the)
Boston, New York, Philadelphia, Pittsburgh,)
Providence, and Virginia Beach Metropolitan)
Areas.)

WC Docket No. 06-172

REPLY COMMENTS OF T-MOBILE USA, INC.

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I. SUMMARY AND INTRODUCTION.

T-Mobile USA Inc. (“T-Mobile”)¹ agrees with numerous oppositions and comments in the above-captioned proceeding that the Commission should dismiss or deny the petitions of the Verizon telephone companies (“Verizon”) for forbearance from regulation (collectively the “Verizon Petitions” or “Petitions”) in six northeastern metropolitan statistical areas (“MSAs”)² as they apply to Verizon’s special access telecommunications services.

¹ T-Mobile is one of the major national wireless carriers in the United States, with licenses covering 46 of the top 50 U.S. markets and serving over 25 million customers with a network reaching over 275 million people (including roaming and other agreements). Via its HotSpot service, T-Mobile also provides Wi-Fi (802.11b) wireless broadband Internet access in more than 8,400 convenient public and business locations.

² See FCC Public Notice, *Pleading Cycle Established For Comments On Verizon’s Petitions For Forbearance In The Boston, New York, Philadelphia, Pittsburgh, Providence, And Virginia Beach Metropolitan Statistical Areas*, 21 FCC Rcd 10174 (WC 2006); FCC Public Notice, *Wireline Competition Bureau Grants Extension Of Time To File Comments On Verizon’s Petitions For Forbearance In The Boston, New York, Philadelphia, Pittsburgh, Providence, And Virginia Beach Metropolitan Statistical Areas*, 22 FCC Rcd 997 (WC 2007), regarding the six forbearance petitions filed by Verizon, one for each of the affected MSAs). Because the six Verizon Petitions make substantially similar requests for each MSA, for convenience this reply

(Footnote continues on next page.)

T-Mobile is one of the few remaining independent national wireless carriers in the United States, with a rapidly growing base of mass market and enterprise customers. T-Mobile has a substantial interest in this proceeding as T-Mobile is both a major customer of Verizon for special access services in the affected MSAs and a retail competitor of Verizon Wireless (Verizon's affiliate) in those MSAs. In addition, T-Mobile is poised to become an important competitor in the emerging "intermodal" marketplace for local exchange services, of which Verizon is the dominant provider in the affected MSAs.

T-Mobile's experience as a purchaser of special access shows that the six Verizon Petitions do not satisfy the statutory requirements for the Commission to forbear from Title II regulation of special access services. In the MSAs at issue, T-Mobile predominantly relies on Verizon for high-capacity special access services. Specifically, T-Mobile purchases Verizon's special access services for the vast majority of the links that T-Mobile needs to complete its network from its cellular base stations to its mobile switching centers. These links provide essential backhaul facilities for T-Mobile's services. Few or no realistic alternatives to using Verizon's special access services for this backhaul exist in the affected MSAs.

T-Mobile agrees with Sprint Nextel that Verizon's market dominance in the MSAs at issue—including Verizon's control over special access—precludes a Commission finding that the wholesale and enterprise markets in the affected MSAs are competitive.³ This reply focuses

(Footnote continued from previous page.)

refers to the petition for the New York MSA ("Verizon New York Petition"), but the arguments herein are applicable to all six petitions. All comments filed on or about March 5, 2007, regarding the Verizon Petitions will hereinafter be short cited.

³ See Sprint Nextel Opposition at 3. Carriers provide "enterprise services" to medium-sized and large business customers. See also *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, 20 FCC Rcd 19415, 19438 (2005) ("*Omaha Forbearance Order*"). Competitors use the special access services

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on Verizon's special access services, which are key inputs to T-Mobile's enterprise and mass-market wireless offerings. Because of Verizon's dominance in providing special access in the MSAs at issue, Verizon special access services do not satisfy the forbearance criteria of Section 10(a) of the Communications Act (the "Act").⁴ Thus, the Commission should release an order expressly refusing to forbear from regulation of Verizon's special access services in the affected MSAs.

II. THE COMMISSION SHOULD NOT FORBEAR FROM REGULATING VERIZON'S SPECIAL ACCESS SERVICES IN THE MSAs AT ISSUE.

A. Because Verizon Has Not Specifically Requested Forbearance for its Special Access Services, the Commission Should Not Grant Such Relief.

The Verizon Petitions do not specifically ask for forbearance with respect to special access services, but Verizon's requests are so broad and vague that, absent an explicit Commission ruling to the contrary, Verizon could urge an interpretation that encompasses special access regulation. For example, Verizon argues that, in the MSAs at issue, the provision of services to enterprise customers is "highly competitive" and requests forbearance in the enterprise market.⁵ As other commenters have noted, however, the Verizon Petitions also ask for "substantially the same relief that [the Commission] granted in the *Omaha Forbearance Order*."⁶

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provided by Verizon and other incumbent local exchange carriers ("ILECs") as wholesale inputs to, among other things, their enterprise offerings.

⁴ See 47 U.S.C. § 160(a). Section 10(a) requires the Commission to forbear from any statutory provision or regulation if it determines that: (1) enforcement of the regulation is not necessary to ensure that charges and practices are just and reasonable, and are not unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary to protect consumers; and (3) forbearance is consistent with the public interest. See *id.*

⁵ See, e.g., Verizon New York Petition at 3-4, 17-23 (Jan. 26, 2007)

⁶ See Verizon New York Petition at 4. See also, ACN *et al.* Opposition at iv.

In that case, the Commission specifically declined to forbear from regulating enterprise services,⁷ which included special access services.⁸

The ambiguity of Verizon's request is further compounded by its reference to various rule sections that focus on switched access,⁹ but mention special access in isolated subsections.¹⁰ At the same time, the Verizon Petitions do not request forbearance from provisions of the rules that specifically apply to special access, such as Section 61.55, which is devoted to contract-based tariffs filed pursuant to special access Phase I pricing flexibility.¹¹

As the Commission has noted, nothing compels it to “comb through its rules” to infer what regulations are encompassed by a carrier's general forbearance request.¹² Given that Verizon has not specifically asked for forbearance from existing special access regulation, there is no reason to grant it such relief. Rather, to avoid confusion about the scope of any decision on Verizon's Petitions (made either through issuance of an order or failure to issue an order), T-Mobile urges the Commission to apply the precedent developed in the *Omaha Forbearance*

⁷ See *Omaha Forbearance Order*, 20 FCC Rcd at 19438.

⁸ See *id.* at 19428 n.66 (“All special access services are addressed in the enterprise section, below.”).

⁹ See, e.g., Verizon New York Petition at 28-29 (discussing dominant carrier regulation of interstate switched access services).

¹⁰ See, e.g., 47 C.F.R. § 61.42(e)(3) (special access basket); 47 C.F.R. § 61.58(c) (notice period for contract-based tariffs filed pursuant to special access Phase I pricing flexibility).

¹¹ See 47 C.F.R. § 61.55.

¹² See *Omaha Forbearance Order*, 20 FCC Rcd at 19425 n.51.

Order and other forbearance orders, and rule that Verizon's request does not extend to special access services.¹³

B. If the Commission Were To Decide that Verizon Requested Regulatory Forbearance for Special Access, the Commission Should Deny Any Such Request.

Even if it were reasonable, which it is not, to treat the Verizon Petitions as requesting forbearance from special access regulation, the request would not satisfy the statutory forbearance criteria under Section 10(a) of the Act.¹⁴ Because the special access marketplace in the affected MSAs is not competitive, continued regulation of Verizon's special access offerings is necessary, and none of the three criteria for forbearance is met.

T-Mobile's experience indicates that Verizon dominates the special access marketplace in the affected MSAs and in its service territory generally. Consistent with T-Mobile's statements in the Verizon-MCI merger proceeding,¹⁵ in the MSAs covered by the Verizon Petitions, T-Mobile has little choice but to purchase the vast majority of its DS1 last-mile links between cell sites and central offices from Verizon.¹⁶ T-Mobile purchases a similarly high percentage of its DS1 interoffice transport from Verizon in the affected MSAs. Even for DS3 interoffice

¹³ See, e.g. *Omaha Forbearance Order*, 20 FCC Rcd at 19424-25, 19470-71; *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, 17 FCC Rcd 27000, 27005-06 (2002); *Petition of SBC Communications Inc., for Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Service*, 20 FCC Rcd 9361, 9366-67 (2005) (denying forbearance petition for, among other things, lack of specificity).

¹⁴ See 47 U.S.C. § 160(a).

¹⁵ See *Verizon Communications Inc. and MCI, Inc.*, 20 FCC Rcd 18433 (2005) (*Verizon Merger Order*).

¹⁶ See Response of T-Mobile USA Inc., WC Docket No. 05-75, at 12-14 (filed May 24, 2005) ("T-Mobile Merger Response").

transport, where some limited competition exists, T-Mobile still must purchase most special access inputs from Verizon.

T-Mobile's experience with Verizon's special access dominance is consistent with that of other parties in this proceeding. Sprint Nextel notes its reliance on Verizon for special access, stating that Verizon effectively controls pricing of special access in the affected MSAs.¹⁷ Similarly, ACN *et al.* characterize Verizon's special access rates as being at "monopolistic" levels.¹⁸ They also note that in the MSAs at issue, Verizon already has obtained substantially reduced regulation in the form of pricing flexibility for various types of special access services, which it followed with price increases.¹⁹

Various government agencies have also recognized that the special access marketplace is not competitive.²⁰ In a report issued in November of 2006, the Government Accountability Office found that facilities-based competitive alternatives for special access are not abundant, and that ILEC prices for such services have actually increased since 2001.²¹ And, as Sprint

¹⁷ Sprint Nextel notes that competitive alternatives to Verizon facilities are rare in the MSAs in question. *See* Sprint Nextel Opposition at 21.

¹⁸ *See* ACN *et al.* Opposition at 35.

¹⁹ *See id.* at 36 and n.138.

²⁰ *See id.* at 22-23. In the *Wireline Broadband Order*, the Commission states that "stand-alone ATM service, frame relay, gigabit Ethernet service, and other high-capacity special access services . . . lack the key characteristics of wireline broadband Internet access service – they do not inextricably intertwine transmission with information-processing capabilities." *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14860-61 (2005).

²¹ *See* U.S. General Accountability Office, Report to the Chairman, Committee on Government Reform, House of Representatives, Telecommunications: FCC Needs to Improve its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services, GAO 07-80 (Nov. 2006).

Nextel notes, the Commission's recent merger orders reiterated the Department of Justice's determination that, absent appropriate remedy, the mergers were likely to have anticompetitive effects on wholesale special access services.²²

As set forth more fully below, because of the lack of competition in the affected MSAs for special access services as well as the limited regulatory oversight that governs Verizon's special access offerings, the Verizon Petitions do not satisfy the three statutory criteria for forbearance with respect to special access services. In particular, Verizon does not, and cannot, demonstrate that grant of the forbearance requested (1) would not create unjust and unreasonable charges, practices and classifications in the special access services market; (2) would not harm consumers of special access services; and (3) is consistent with the public interest.²³

First Criterion – Preventing Unjust and Unreasonable Rates and Discrimination:

Considering the lack of competition in the areas at issue, effective regulation is necessary to prevent Verizon from charging rates for special access that are unjust and unreasonable and from engaging in unjust and unreasonable discrimination in the provision of special access services.²⁴ Because of Verizon's dominance in the special access market, the Commission's pricing flexibility rules and price cap regulation should be strengthened to prevent Verizon from unjust and unreasonable activity. Moreover, Verizon has not shown a basis for eliminating special access regulation altogether in the affected MSAs. As Sprint Nextel explains, cable and competitive telephony providers do not generally offer wholesale services in those areas, and

²² See Sprint Nextel Opposition at 23 (citing *Verizon Merger Order* at 18447; *SBC Communications, Inc. and AT&T Corp. Applications for Transfer of Control*, 20 FCC Rcd 18290, 18305 (2005)).

²³ See 47 U.S.C. § 160(a)(1-3).

²⁴ See *id.* § 160(a)(1).

even cable-based competitors must, to some degree, rely on Verizon's facilities.²⁵ Sprint Nextel also correctly points out that the Commission has determined that VoIP is not yet a substitute in the enterprise market, which leaves Verizon as the only viable option for special access facilities in the MSAs.²⁶

Second Criterion – Protecting Consumers: Consumers will be harmed if special access regulation is removed rather than strengthened.²⁷ As T-Mobile has explained in other proceedings, the ability to become an effective force in fostering intermodal competition depends on its ability to obtain critical special access services and facilities from ILECs, such as Verizon, at nondiscriminatory prices.²⁸ Effective regulation of special access services will mean more intra- and intermodal competition and, therefore, less need for regulating in the retail service market, where wireless carriers have begun to compete against ILECs.²⁹ Without effective regulation, Verizon would be able to use its control of special access inputs to stifle the competition—and its undeniable benefits to consumers—that T-Mobile and others are seeking to provide in both the traditional voice and broadband markets.

Third Criterion – Serving the Public Interest: Forbearance from regulation of Verizon's special access services in the affected MSAs would be contrary to, not consistent with, the public interest.³⁰ Regulation of Verizon's special access services is already extremely limited

²⁵ See Sprint Nextel Opposition at 15.

²⁶ See *id.* at 17.

²⁷ See 47 U.S.C. § 160(a)(2).

²⁸ See Comments of T-Mobile USA Inc., WC Docket No. 05-25, RM-10593, at 3 (filed June 13, 2005).

²⁹ See *id.*

³⁰ See 47 U.S.C. § 160 (a)(3).

in the MSAs at issue, and additional forbearance from special access regulation would harm, not promote, competition.³¹ As discussed above, T-Mobile and other independent wireless providers like Sprint Nextel rely on Verizon for inputs to their wireless offerings, and Verizon has strong incentives to raise the price and degrade the quality of those inputs in order to protect its wireline dial tone offerings and its Verizon Wireless affiliate from wireless competition. As T-Mobile pointed out in its *Verizon Merger Order* response, a post-merger Verizon would do everything possible to avoid competing with itself in its own service area, “resulting over time in higher special access prices to unaffiliated special access customers... such as T-Mobile.”³² ACN *et al.* note in this regard that the price of Verizon’s special access services has risen in some markets where pricing flexibility has been granted. Leaving Verizon entirely free to act on its anticompetitive incentives by granting it additional deregulation in the form of forbearance would not serve the public interest.

T-Mobile recognizes that in late 2005, the Commission adopted certain conditions with regard to special access services in connection with the Verizon-MCI merger transaction.³³ The Commission obviously has no grounds for forbearing from any of those merger conditions based on the Verizon Petitions, which were filed after and in full knowledge of their adoption. Moreover, the existence of those merger conditions, most of which will expire less than two years from now, does not justify Commission forbearance from its regulation of Verizon’s special access services.

³¹ *See id.* § 160(b).

³² *See* T-Mobile Merger Response at 12.

³³ *See Verizon Merger Order*, 20 FCC Rcd at 18559-61 (2005).

C. Rather than Forbearing, the Commission Should Resolve the Special Access Rulemaking in Order To Strengthen Oversight of Verizon's Special Access Services.

T-Mobile agrees with Sprint Nextel that Verizon cannot justify its requested forbearance while the Commission's long-pending *Special Access Rulemaking* remains unresolved.³⁴ Just last month, Chairman Martin stated before Congress his interest in refreshing the record in the *Special Access Rulemaking* in light of the recent wireline mergers, which include the Verizon-MCI merger.³⁵ The Commission should take such action immediately based on the extensive record already established.³⁶ While that review is pending, the Commission should not permit further deregulation of Verizon's special access services through forbearance or otherwise.

III. CONCLUSION

For the foregoing reasons, T-Mobile urges the Commission to adopt and release an order that expressly finds that the Verizon Petitions do not include a request for forbearance from special access regulation. Even if the Commission were to grant other aspects of the Petitions or

³⁴ See Sprint Nextel Opposition at 24-25, citing *Special Access Rates for Price Cap Local Exchange Carriers*, 20 FCC Rcd 1994 (2005) ("*Special Access Rulemaking*").

³⁵ *Verizon Merger Order*, 20 FCC Rcd 18433 (2005).

³⁶ See *Oversight of the Federal Communications Commission*, Hearing of the Subcomm. on Telecommunications and the Internet of the House Energy and Commerce Comm., 110th Cong., Federal News Service, Mar. 14, 2007 (Testimony of Hon. Kevin Martin, Chairman, FCC), LEXIS transcript at 24.

otherwise allow them to go into effect, it should explicitly decline to forbear from regulation of Verizon's special access services in the MSAs covered by the Petitions.

Respectfully submitted,

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